



25 AUG 2003

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In re Application of	:	
Donald JAFFREY	:	DECISION ON PETITION
Application No.: 09/980,956	:	
PCT No.: PCT/AU00/00631	:	UNDER 37 CFR 1.181
Int. Filing Date: 02 June 2000	:	
Priority Date: 04 June 1999	:	
Attorney Docket No.:A-71184/DJB/MAK	:	
For: A FUEL CELL GAS SEPARATOR	:	

This decision is in response to applicant's Statement For Withdrawal Of Abandonment filed by facsimile on 07 August 2003 which is being treated as a petition under 37 CFR 1.181 requesting that a Notification Of Abandonment mailed 14 March 2003 be vacated.

### **BACKGROUND**

On 02 June 2000, applicant filed international application PCT/AU00/00631 claiming priority to an earlier application filed 04 June 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 20 December 2000. Accordingly, the thirty month period for paying the basic national fee in the United States of America expired at midnight on 04 December 2001.

On 04 December 2001, applicant filed a Transmittal Letter (From PTO-1390) for entry into the national stage in the United States of America. Filed with the Transmittal Letter was, *inter alia*, the requisite basic national fee.

On 04 June 2002, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification Of Missing Requirements Under 35 U.S.C. 371 In The United States Designated/Elected Office (DO/EO/US)" (Form PCT/DO/EO/905). The Notification indicated that an oath or declaration in compliance with 37 C.F.R. 1.497(a) and (b) must be submitted

within two months of its 04 June 2002 date of mailing or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 14 March 2003, the DO/EO/US mailed a "Notification Of Abandonment" (Form PCT/DO/EO/909) indicating that the application is abandoned as to the United States of America for failure to respond to the Notification mailed 04 June 2002.

On 07 August 2003, applicant filed the instant petition effectively requesting that the Notification Of Abandonment mailed 14 March 2003 be vacated in view of the timely submission of a declaration. The petition was accompanied by, *inter alia*, a copy of a check for \$40.00, a copy of a transmittal letter, a copy of an assignment form (Form PTO-1595), a copy of an assignment document, a copy of a power of attorney by assignment, a copy of a combined declaration and power of attorney, a copy of an information disclosure statement, a copy of the international search report, and a copy of a date-stamped postcard receipt.

### DISCUSSION

MPEP at section 503 states, in part:

"A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Applicant's postcard receipt lists a Transmittal of Missing Requirements, Copy of Notification of Missing Requirements Under 35 U.S.C. 371, Declaration and Power of Attorney for Patent Application, Assignment with Form PTO-1595, Our Check No. 1244 in the amount of \$40.00, Power of Attorney by Assignee, and Information Disclosure Statement with Form PTO-1449 and copies of prior art references and includes a U.S. Patent and Trademark Office (PTO) date stamp of 25 June 2002.

PTO financial records indicate receipt of a \$40.00 assignment fee on 25 June 2002.

The evidence is sufficient to establish that the executed declaration was filed on 25 June 2002.

### CONCLUSION

In view of the above, applicant's petition is GRANTED.

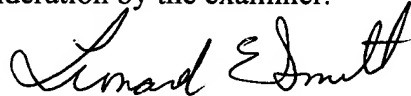
The Notification of Abandonment mailed 14 March 2003 is hereby **VACATED**.

The application is being returned to the DO/EO/US for issuance of a Notification Of Acceptance Under 35 U.S.C. 371 (Form PCT/DO/EO/903) indicating a date of 25 June 2002 under 35 U.S.C. 371.

Applicant should note that the petition filed 07 August 2003 did not contain copies of the references listed on the Form PTO-1449. Although there is sufficient evidence that the copies were originally filed on 25 June 2002, the file does not contain copies of those references and they should be resubmitted in order to ensure their consideration by the examiner.



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